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Before the  
Federal Communications Commission

In the Matter of:

Implementation of the Cable  
Television Consumer Protection  
and Competition Act of 1992

Tier Buy-Through Prohibitions

)  
)  
) MM Docket No.  
) 92-262  
)

To the Commission

JOINT REPLY COMMENTS

Blade Communications, Inc., Cablevision Industries Corp., Multivision Cable TV Corp., Providence Journal Company<sup>1</sup> and Sammons Communications, Inc. (the "Companies"), by their attorneys, hereby submit their Joint Reply Comments in the above-captioned rulemaking proceeding. This Reply will address certain issues and responses contained in other initial comments.

Preliminarily, the Companies note that many of the comments underscore their concern that what is essentially a limited and straightforward statutory requirement can have far-reaching and significantly adverse consequences if it is implemented in an overly-broad and rigid manner. In their initial comments the Companies noted that buy-through

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<sup>1</sup> Providence Journal Company conducts its cable television operations through its subsidiaries Colony Communications, Inc. and King Videocable Company.

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regulations must take into account not only the cable distribution technology of today but also the fiber, compression and digital technologies of tomorrow.

As noted in a number of comments, full utilization of home video products (e.g., cable ready sets, multiple or divided screen features and VCRs) becomes more difficult when cable channels are scrambled.<sup>2</sup> The Act charges the Commission with addressing this situation in its equipment compatibility proceeding. The Commission should recognize that many systems currently have restricted addressability to only the premium channels for the very purpose of minimizing incompatibility of cable with subscriber home video equipment.

The Companies are concerned that current equipment compatibility problems will be exacerbated and cable operators will encounter greater difficulty in incorporating changes resulting from the Commission's equipment compatibility study if the Commission acts too hastily in this proceeding. Specifically, the Commission should not adopt rules that force systems that are now partially addressable to scramble all channels prior to the conclusion of the equipment compatibility proceeding. To do so might

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<sup>2</sup> The initial comments filed by NCTA in this rulemaking included a statement from Joseph Van Loan, Senior Vice President of Cablevision Industries (one of the parties hereto) which described in detail the technical and operational difficulties and problems associated with the use of traps as an alternative to scrambling.

make it easier for an extremely small number of basic-only subscribers to purchase a pay channel, but it also would render inoperative cable ready, taping and other advanced capability of the majority of subscribers' home video equipment.

For these reasons, the Companies urge the Commission not to create a buy-through scheme that would be at cross-purposes with forthcoming rules and policies on equipment compatibility. The Companies do not mean to suggest that the outcome of the equipment compatibility proceeding will necessarily result in solutions to scrambling problems; they merely point out that this issue will be an element to be considered in that broader proceeding. That concern is echoed by many of the initial comments and is particularly well articulated by the Consumer Electronics Group of the Electronic Industries Association; the Companies commend those comments to the Commission's careful attention.

The Companies also urged the Commission to adopt a narrow reading of the discrimination language in the buy-through provision so as not to undermine legitimate marketing techniques, such as promotions and discounts, which are well-established not just in the cable industry but in many other goods and services businesses and which have achieved wide consumer acceptance. Again, those views were expressed by many of the cable industry parties. Noteworthy in this regard are the comments of the Massachusetts Community

Antenna Television Commission which cautioned that restrictions on multiple or overlapping tiers could restrict the operator's ability to offer innovative service packages "that we believe are beneficial to subscribers".

Additionally, the Massachusetts Commission also noted the potential for a diminution of advertising revenue associated with tier services which in turn could have an adverse impact on a system's rate structure. The Companies likewise commend these observations from a non-federal regulatory agency with public interest responsibilities for cable.

Finally, the companies wish to address the comments of the National Association of Telecommunications Officers and Advisors ("NATOA") and other associations of local municipal officials. Predictably, the proposals of these local authorities urge positions which at worst are contrary to the Act and at best are intended simply to maximize the regulatory power and leverage the bargaining position of these officials.

For example, NATOA et al. assert that the Commission's waiver authority is exercisable only in extremely limited circumstances and only during the first ten years after enactment of the 1992 Act. Yet the Commission's NPRM concludes that the ten year exception for technical incapability obviates the need for a waiver during the

initial ten year period.<sup>3</sup> The Companies concur with the Commission's observation.

Additionally the NATOA comments propose that the Commission presume that virtually all systems are capable of compliance notwithstanding the conclusion of the Senate Committee Report that approximately 25% of all systems are addressable.<sup>4</sup> In the rare case where an exception or other determination that a system is not capable of compliance might be appropriate, NATOA insists that the process must occur at the local level. This approach would not only conflict with the goal of ease of administration but would result in a total lack of uniformity of definitions and criteria for determining technical capability, even among communities served by a single technically integrated system.

NATOA also contends that the cost of compliance should not be a factor in evaluating waiver requests as those costs may be passed on directly to subscribers. This approach misreads the intent of the waiver provision. The Companies note that only a minuscule percentage of their subscribers take the basic-only level of service and that very few of those can be expected to subscribe to premium channels. This situation is typical in the industry. It is precisely

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<sup>3</sup> NPRM in Docket 92-262 at para. 9.

<sup>4</sup> S. Rep. No. 92, 102d Cong., 1st Sess. 77 (1992). NCTA's comments in this proceeding contend that the number of fully addressable systems is much less than 25%.

because the cost of compliance as reflected in the rates of the vast majority of subscribers may outweigh the benefits of compliance to a very few subscribers that the Commission is expressly given authority to grant waivers where compliance would necessitate a rate increase. One wonders whether the cities will be equally generous in permitting other cost pass-throughs in their exercise of basic rate regulation authority.

#### Conclusion


In summary, the Companies urge the Commission to not overly complicate the substantive aspects of the buy-through provision and not create an overly burdensome process which simply adds unnecessary administrative costs and efforts to achieving compliance. In particular, the Companies reiterate their concern that implementation of rules to accommodate those who choose to purchase only basic and a premium or pay-per-view service should not operate to disadvantage other subscribers in either the use of existing or future cable

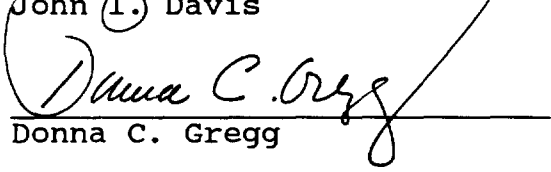
equipment and television receivers or in the availability of  
widely-accepted program packages and pricing.

Respectfully submitted,

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January 28, 1993

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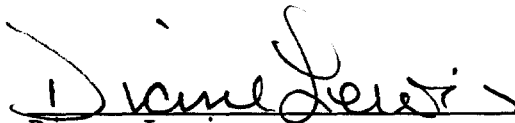
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